TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 209. 67.

E. T. WILSON, RECEIVER OF THE FIRST NATIONAL BANK OF HELENA, MONTANA, PLAINTIFF IN ERROR,

vs.

THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO, ILLINOIS.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED MAY 24, 1900.

(17,774.)

(17,774.)

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E. T. WILSON, RECEIVER OF THE FIRST NATIONAL BANK OF HELENA, MONTANA, PLAINTIFF IN ERROR,

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THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO, ILLINOIS.

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Transcript of Record.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1898.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO, Illinois, Defendant in Error.
No. 612.

Mr. D. A. Holmes, counsel for plaintiff in error.
Mr. John N. Jewett, counsel for defendant in error.

Error to the district court of the United States, northern district of Illinois, northern division.

Transcript of record filed June 22, 1899.
Printed record filed Aug. 19, 1899.
EDWARD M. HOLLOWAY, *Clerk.*

1 *Pleas.*

Pleas had at a regular term of the district court of the United States of America for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division of said district, on the third Monday of December, it being the 19th day thereof, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second year.

2 Present: The Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois; John C. Ames, United States marshal for said district, and T. C. MacMillan, clerk of said court.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY.
9141.

Be it remembered, that heretofore, to wit, on the 4th day of April, A. D. 1898, there was filed in the clerk's office of the district court of the United States, for the northern district of Illinois, a declaration, which said declaration is in the words and figures following, to wit:

Declaration. Filed April 4, 1898.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the District Court of the United States, Northern District of Illinois.

E. T. Wilson, receiver, plaintiff, by D. A. Holmes his attorney, complains of P. C. Peterson, a citizen of the State of Illinois, and The Merchants' Loan & Trust Company, a corporation created under and by virtue of the laws of the State of Illinois, and having its principal office at the city of Chicago, in said State, defendants, of a plea of debt:

For, that, whereas on and prior to the 4th day of September, 1896, the First National Bank of Helena, Montana, was a national banking corporation, organized under and by virtue of the laws of the United States, doing business at the city of Helena; and on the 4th day of September, 1896, being then insolvent, it suspended and ceased to do business; and on the 10th day of September, 1896, E. D. Edgerton was by the Honorable James H. Eckels, Comptroller of the Currency, duly appointed as receiver of the said bank and qualified as such; and on the 15th day of January, 1897, the said Edgerton having resigned as such receiver, one J. Sam. Brown was by the said Comptroller of the Currency appointed as the successor of the said *J. Sam. Brown* as receiver of the said bank, and qualified as such, and thereafter on the 9th day of November, 1897,

3 the commission of the said J. Sam. Brown as receiver of the said bank was revoked, and the plaintiff herein, E. T. Wilson, was appointed as his successor, and immediately thereupon duly qualified, and has ever since been acting as the receiver of the said bank, which said bank has since the 4th day of September, 1896, been and now is in the course of liquidation, and on the 11th day of October, 1897, upon an accounting by the receiver of the said The First National Bank of Helena, Montana, and a valuation of uncollected assets remaining in his hands, it was found necessary to enforce the liability of the stockholders in said bank; and the Honorable James H. Eckels, Comptroller of the Currency did thereupon make an assessment and requisition upon the shareholders of the said bank, and did demand of each and every one of them the payment of $100.00 upon each and every share of capital stock of said banking corporation held or owned by them respectively, and did direct the receiver of the said bank to take all necessary proceedings by suit or otherwise, to enforce the collection of the said assessment, which said assessment was by the said Comptroller of the Currency ordered to be paid on or before the 11th day of November, and

Whereas P. C. Peterson, one of the defendants herein appeared by the books of the said, The First National Bank of Helena, Montana, to be the owner and holder of one hundred and twenty (120) shares of stock in said bank, which said stock, however, was held by him

for the sole use and benefit of the defendant, The Merchants' Loan & Trust Company, which said Merchants' Loan & Trust Company is a banking institution, and the said P. C. Peterson being one of its employees.

By means whereof the defendants on the 11th day of November, 1897, became liable to pay to the receiver of the said The First National Bank of Helena, Montana, the sum of twelve thousand dollars ($12,000.00) being one hundred dollars ($100.00) upon each and every share of stock in said The First National Bank of Helena, held and owned by them.

Yet the defendants though often requested, and though the day of payment in the said order of the Comptroller of Currency levying assessment upon the stockholders of the said First National Bank of Helena, Montana, has elapsed have not paid to the plaintiff the said sum of twelve thousand dollars, or any part thereof, but refuse so to do, to the damage of the plaintiff of fifteen thousand dollars ($15,000.00).

And therefore he brings his suit, etc.

E. T. WILSON, *Receiver*,
By D. A. HOLMES, *His Att'y*.

4 Endorsed: 9141. District court United States. E. T. Wilson, receiver, *vs.* P. C. Peterson *et al.* Declaration. Filed April 4th, A. D. 1898. T. C. MacMillan, clerk. Mason, Holmes & Mason, attorneys for plaintiff.

And afterwards, to wit: on the 5th day of May, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

Order of May 5, 1898, Dismissing as to Defendant P. C. Peterson.

E. T. WILSON, Receiver,
vs.
P. C. PETERSON, MERCHANTS' LOAN AND TRUST COMPANY. } 9141.

Comes the plaintiff by his attorney, and on his motion, it is ordered by the court that this cause be and the same is hereby dismissed as to the defendant P. C. Peterson.

And afterwards, to wit, on the 5th day of May, A. D. 1898, the following order was had and entered of record in said cause, before the Honorable Peter S. Grosscup, judge, to wit:

Order of May 5, 1898, Granting Leave to File Amended Declaration.

E. T. WILSON, Receiver,
vs.
MERCHANTS' LOAN AND TRUST COMPANY. } 9141.

Comes the plaintiff by his attorney, and on his motion, it is ordered by the court that the plaintiff be, and he is hereby given leave to file an amended declaration in this cause.

And afterwards, to wit: on the 5th day of May, A. D. 1898, an amended declaration was filed in the clerk's office of the district court of the United States for the northern district of Illinois, said amended declaration being in the words and figures following, to wit:

5 *Amended Declaration. Filed May* 5, 1898.

UNITED STATES OF AMERICA,
State of Illinois, Northern District.

In the District Court of the United States for the Northern District of Illinois.

E. T. WILSON, Receiver First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY, a Corporation.

The plaintiff, by leave of court first had and obtained, amends his declaration heretofore filed herein, as follows, to wit:

E. T. Wilson, receiver of the First National Bank of Helena, Montana, a banking corporation, organized and doing business under the laws of the United States, plaintiff, by D. A. Holmes, his attorney, complains of The Merchants' Loan & Trust Company, a corporation, organized and doing business under the laws of the State of Illinois, defendant, of a plea that it render unto the plaintiff the sum of twelve thousand dollars ($12,000) which it owes and unjustly detains from the plaintiff.

And the plaintiff avers that on and prior to the 4th day of September, 1896, the First National Bank of Helena, Montana, was a banking corporation organized under and doing business by virtue of the laws of the United States, and on the said 4th day of September, 1896, it became and was insolvent, and suspended and ceased to do business, and that afterwards on the 10th day of September, 1896, E. D. Edgerton was duly appointed as receiver of said bank and qualified as such; and afterwards on the 15th day of January, 1897, the said Edgerton having resigned as such receiver, one J. Sam. Brown was, by the Comptroller of the Currency appointed as successor of the said Edgerton, and duly qualified as such receiver; and that afterwards on the 9th day of November, 1897, the commission of the said J. Sam. Brown, receiver as aforesaid, was revoked, and the plaintiff E. T. Wilson was duly appointed as his successor, and immediately qualified as such, and has ever since been acting as receiver of said bank; that on the 11th day of October, 1897, upon an accounting by the receiver of the said First National Bank of Helena, Montana, and a valuation of the uncollected assets of
6 the said bank, it was found necessary to enforce the liability of the stockholders in said bank, and the Honorable James H. Eckels, the then Comptroller of the Currency, did thereupon make an assessment and requisition upon the shareholders of the said bank at the time of its suspension of business, and did demand of each and every one of the shareholders as aforesaid, the payment

of the sum of one hundred dollars upon each and every share of capital stock of the said bank, held or owned by them respectively, such payment to be made on or before November 11th, 1897, and did direct the receiver of said bank, and his successor in office to take all necessary proceedings by suit or otherwise to enforce the collection of said assessment.

And the plaintiff further avers that the Merchants' Loan & Trust Company, a corporation, at some time between the 1st day of December, 1894, and the 1st day of June, 1895, (the exact date being to plaintiff unknown), purchased and became the owner of 120 shares of the capital stock of said First National Bank of Helena, Montana, of the par value of one hundred dollars each, and continued to be and was at the time said bank suspended and ceased to do business the real owner of the same. But in order to evade the responsibility imposed by law upon the shareholders in said bank, caused said shares to be placed on the books of said bank in the name of P. C. Peterson, one of its employees, in whose name said shares appeared on the said books at the time of said failure. And the plaintiff avers that the said Peterson was at the time said stock was issued to him as aforesaid, and at the time of the failure of said bank, a person of small means and not responsible financially.

By means whereof and by force of the laws of the United States, the said The Merchants' Loan & Trust Company, a corporation, became liable to pay to the plaintiff the amount of the said assessment and requisition upon it as aforesaid, being the sum of twelve thousand dollars ($12,000.00), said amount being one hundred dollars ($100.00) on each and every share of the capital stock of the said First National Bank of Helena, Montana, owned by it as aforesaid.

Yet the defendant, though often requested, has not paid the said sum of money so due it as aforesaid, or any part thereof, but so to do has wholly refused, and still does refuse, to the damage of the plaintiff of fifteen thousand dollars.

And therefore he brings his suit, etc.

E. T. WILSON, *Receiver*,
By D. A. HOLMES,
His Attorney.

7 Endorsed: No. 9141. United States of America, State of Illinois, northern district. In the district court. Amended declaration. E. T. Wilson, receiver, *vs.* Merchants' Loan & Trust Co. Filed May 5th, 1898. T. C. MacMillan, clerk. D. A. Holmes, att'y for receiver.

And afterwards, to wit, on the 5th day of May, A. D. 1898, the pleas of the Merchants' Loan & Trust Company were filed in the clerk's office of the U. S. dist. court for the northern dist. of Ill., said pleas being in the words and figures following, to wit:

Pleas of Merchants' Loan and Trust Company. Filed May 5, 1898.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the District Court of the United States in and for the said District.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY. } Debt.

And the said defendant, The Merchants' Loan and Trust Company, by John N. Jewett, its attorney, comes and defends the wrong and injury, when &c., and says, that it does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said defendant hath above thereof in his said amended declaration, complained against it, and of this the said defendant puts itself upon the country, &c.

And for a further plea in this behalf, the said defendant says, that the said plaintiff ought not by reason of anything in said amended declaration contained, to have or maintain his aforesaid action thereof against it, because it says that it did not, at any time between the first day of December, 1894, and the first day of June, 1895, or at any other time, purchase or become the owner of one hundred and twenty (120) shares of the capital stock of the said First National Bank of Helena, Montana, or any share or shares of the capital stock of said bank, and of this the said defendant puts itself upon the country, &c.

And for a further plea in this behalf the said defendant says *actio non*, because it says that the said one hundred and twenty (120) shares of the capital stock of the said First National Bank of Helena, Montana, are and all times when &c. have been held by and in the name of the said P. C. Peterson, in the said amended declaration mentioned, as trustee and as security for the payment of the principal and interest of a certain promissory note, bearing date the 15th day of April, A. D. 1893, for the principal sum of twelve thousand dollars ($12,000) and payable to the order of the said defendant, The Merchants' Loan and Trust Company, on the sixteenth day of August, after the date thereof made and executed for value received, by one Shirley C. Ashby to the said defendant, and bearing interest at the rate of seven per cent. per annum after maturity.

And the said defendant avers that the said promissory note has ever since the execution thereof as aforesaid, been held and owned and still is held and owned by the said defendant, and except as to the sum of sixteen hundred and eighty dollars ($1,680) paid thereon on to wit: the 12th day of December, A. D. 1895, is now due and wholly unpaid. Wherefore it prays judgment, if the said plaintiff

ought to have or maintain his aforesaid action thereof against it, the said defendant.

JOHN N. JEWETT,
Att'y for Defendant.

JNO. N. JEWETT, *Of Counsel.*

Endorsed: No. 9141. In the United States district court for the northern district of Illinois. E. F. Wilson, receiver, &c., *vs.* The Merchants' Loan and Trust Company. Pleas. Filed May 5th, 1898. T. C. McMillan, clerk. Jno. N. Jewett, att'y & of counsel for def't.

And afterwards, to wit: on the 2d day of November, A. D. 1898, a statement of facts was filed in the clerk's office of the district court of the United States for the northern district of Illinois.

Statement of Facts, Filed Nov. 2, 1898, Set Out in Bill of Exceptions.

(Statement of facts was allowed as bill of exceptions on May 13th, 1899, and will be set out hereafter under that date, as bill of exceptions.)

9 And afterwards, to wit, on the 11th day of November, A. D. 1898, the replication of E. T. Wilson, receiver, was filed in the clerk's office of the district court of the United States for the northern district of Illinois, said replication being in the words and figures following, to wit:

Replication of E. T. Wilson. Filed Nov. 11, 1898.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the District Court of the United States for the Northern District of Illinois.

E. T. WILSON, Receiver, etc., }
vs. } 9141.
THE MERCHANTS' LOAN AND TRUST COMPANY. }

And the said plaintiff, by his attorney, as to the first and second pleas filed by the said defendant in which the said defendant puts itself upon the country, comes and does the like.

And the plaintiff says that he ought not to be barred from having and maintaining his cause of action in his said declaration set out by reason of anything in the defendant's third plea pleaded, because he says that the said 120 shares of capital stock of First National Bank of Helena, Montana, in the defendant's said plea mentioned *was* not held by the said P. C. Peterson as security for the payment of the principal and interest of the said promissory note in the defendant's said plea set out, but that the said defendant was and still is the real owner of said stock, and of this he puts himself upon the country.

D. A. HOLMES,
Attorney for Plaintiff.

Endorsed: 9141. In the district court of the United States. E. T. Wilson, receiver, *vs.* The Merchants' Loan & Trust Company. Replication. Filed Nov. 11th, 1898. T. C. MacMillan, clerk. Mason, Holmes & Mason, attorneys & counsellors at law, Home Insurance building, 205 La Salle St., Chicago. Telephone, main, 4283. Suite 513.

10 And afterwards, to wit, on the 18th day of April, A. D. 1899, the following order was had and entered of record in said cause, before the Honorable Christian C. Kohlsaat, judge, to wit:

Order of April 18, 1899, *Granting Leave to Change Stipulation.*

E. T. WILSON
vs.
MERCHANTS' LOAN AND TRUST COMPANY. } 9141.

On motion, leave is given to change the stipulation of parties herein by expunging the name of Lester S. Grosscup.

And afterwards, to wit, on the 18th day of April, A. D. 1899, the following order was had and entered of record in said cause, before the Honorable Christian C. Kohlsaat, judge, to wit:

Judgment, April 18, 1899.

E. T. WILSON, Receiver of First National Bank of Helena,
vs.
F. C. PETERSON, MERCHANTS' LOAN AND TRUST COMPANY. } 9141.

Now come the parties by their attorneys and thereupon a jury is waived by written stipulation and this cause is submitted to the court for trial, and the court having heard the evidence and arguments of counsel, and being now fully advised finds the issues for the defendant- to which finding the plaintiff excepts and thereupon the plaintiff enters his motion for a new trial which is heard and overruled, to which ruling the plaintiff excepts. It is thereupon considered and adjudged by the court that the defendants recover of the plaintiff their costs in this behalf to be taxed and that execution issue therefor to which judgment the plaintiff then and there excepts.

And afterwards, to wit, on the 18th day of April, A. D. 1899, a motion for a new trial of this cause was filed in the clerk's office of the district court of the United States for the northern district of Illinois, said motion for a new trial being in the words and figures following, to wit:

11 *Motion for New Trial. Filed April* 18, 1899.

In the District Court of the United States for the Northern District of Illinois, Northern Division.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY. } At Law.

Motion for a new trial.

Comes now the plaintiff and moves the court to set aside the findings of the court and grant a new trial herein for the following reason, namely:

The court erred in finding the issues in favor of the defendant and against the plaintiff.

D. A. HOLMES,
Attorney for Plaintiff.

Endorsed: No. 9141. In the district court of the United States for the northern district of Illinois, northern division. E. T. Wilson, receiver of the First National Bank of Helena, Montana, *vs.* The Merchants' Loan & Trust Company. Motion for a new trial. Filed April 18, A. D. 1899. T. C. MacMillan, clerk. D. A. Holmes, attorney for plaintiff, 843–'6 Marquette bldg.

And afterwards, to wit: on the 13th day of May, A. D. 1899, the statement of facts filed in said court on November 2nd, 1898, was allowed as a bill of exceptions, which said bill of exceptions is in the words and figures following, to wit:

12 *Bill of Exceptions. Filed May* 13, 1899.

In the District Court of the United States for the Northern District of Illinois.

E. T. WILSON, Receiver of the First National Bank of Helena, Mont.,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY.

Statement of Facts. Filed Nov. 2, 1898.

Statement of facts.

On the 15th day of April, 1893, The Merchants' Loan and Trust Company, the defendant, loaned to Shirley C. Ashby, of Helena, Montana, twelve thousand dollars ($12,000.00) and took therefor his promissory note, in usual form, payable on the 16th day of August next following. As collateral security for the payment of said note

at maturity, Ashby assigned in blank and delivered to the defendant a certificate representing one hundred and fifty (150) shares of the capital stock of the Helena National Bank of Helena, Montana. The note taken for the loan was of the kind usually termed a collateral note, and authorized the sale of the collateral deposited as security therefor, upon default in the payment of the note. A copy of said note is hereto attached marked "Exhibit 1" and made a part of this statement.

At the time of the transaction above mentioned Ashby was president of the Helena national bank, which so far as known to the defendant was in good financial condition.

On the 26th day of July, 1893, Ashby made an assignment for the benefit of his creditors, to one Robert S. Ford of Grand Falls, Montana, and amongst the property assigned by him was the certificate for one hundred and fifty (150) shares of the capital stock of the Helena national bank, described as then held by the Merchants' Loan and Trust Company in pledge.

About the date of his assignment Ashby resigned the presidency of the Helena national bank and one E. D. Edgerton became president of the bank and subsequently acted as such. One Frank Baird was then cashier of the bank and so continued until the latter part of the summer of 1894, when he was succeeded by one George F. Cope, in that capacity.

Everything relating to the transaction remained in the situation above stated until the summer of 1894. The Ashby note was
13 wholly unpaid and the certificate of stock remained in the possession of the defendant, no transfer thereof being made upon the books of the bank. And on the 25th day of June, 1894, the defendant wrote a letter to Frank Baird, cashier of said Helena national bank, the original of which is hereto attached and marked "Exhibit A."

Some time in September or in the early part of October, 1894, the defendant received through the mail a printed circular letter relating to the affairs of the Helena national bank, signed "E. D. Edgerton, president" and dated at "Helena, Montana, September 5th, 1894." The document so received is hereto attached marked "Exhibit B," and made a part of this statement.

On October 15th, 1894, a letter was written by the then cashier of the defendant, and duly forwarded by mail to the cashier of the Helena national bank, a copy of which is hereto attached marked "Exhibtt C," is reply to which the cashier of the defendant received in due course of mail a letter dated at "Helena, Montana, Oct. 18th, 1894," signed E. D. Edgerton, president, the original of which as so received is hereto attached marked "Exhibit D." The statement referred to as enclosed in the letter is also attached as part of the last-named exhibit.

Later in the year 1894, it was proposed by the parties in interest at Helena, to consolidate the Helena national bank with the First National Bank of Helena, and a circular letter relating to such consolidation was sent to and received by the defendant, in reply to which and the letter enclosing the same, a letter was written by the

then vice-president of the defendant to George F. Cope, cashier, dated December 17th, 1894, a copy of which is hereto attached marked "Exhibit E," and by due course of mail a reply to said letter was *received* by the defendant addressed to its said vice-president, dated "Helena, Montana, Dec. 22, 1894" and signed "E. D. Edgerton, president of Helena national bank," which said reply is hereto attached marked "Exhibit F."

On December 26th and in response to the letter of Edgerton, president, of December 22nd, the vice-president of the defendant forwarded to him the certificate for one hundred and fifty (150) shares of the capital stock of the Helena national bank, enclosed in a letter of that date, a copy of which is hereto attached marked "Exhibit G," and by due course of mail a reply was received by the defendant dated December 31st, 1894, and signed "E. D. Edgerton, president, the Helena national bank" with the enclosure as therein stated, a copy of which is hereto attached marked "Exhibit H."

14 Subsequently and prior to April 22nd, 1895, the consolidation of the Helena national bank with the First National Bank of Helena was consummated with the consent and approval of the Comptroller of the Currency, Hon. James H. Eckles. The basis of the consolidation was an allowance to the stockholders in the Helena national bank of eighty per cent. of the face value of their stock in the stock of the consolidated bank, the name of the new or consolidated bank being "the First National Bank of Helena" and on or about May 17th, 1895, the certificates representing one hundred and fifty shares (150) of the capital stock of the Helena national bank standing in the name of P. C. Peterson were with the consent and under the direction of the defendant surrendered and new certificates representing one hundred and twenty (120) shares in the new or consolidated bank were issued to said Peterson in the place. The letter enclosing said certificates for exchange and containing the defendant's directions is hereto attached marked "Exhibit I." These last-named certificates have ever since been and now are in the possession and control of the defendant, and are held by it in the same way and for the same purpose as the certificates for one hundred and fifty (150) shares of the capital stock of the Helena national bank were originally held, except as the conditions may have been changed by the facts hereinbefore stated, but that neither the defendant nor the said Peterson ever took any part in the management of either of said banks or participated in the administration of their affairs.

On October 14, 1895, the 2nd vice-president of the defendant wrote and forwarded to Mr. Ford, the assignee of Shirley C. Ashby, a letter, a copy of which is hereto attached marked "Exhibit J," and in reply thereto received in due course of mail from said Ford, a letter which is hereto attached marked "Exhibit K." Afterwards the defendant received a letter from the said Ford bearing date January 4th, 1896, which letter is hereto attached marked "Exhibit L," to which letter the defendant replied under date of January 7th, 1896, a copy of which reply is hereto attached marked "Exhibit M."

All the communications between the defendant and said banks and

their officers in any manner relating to said stock and stock certificates since the certificates for one hundred and fifty shares of stock in the Helena national bank first came into the possession of the defendant in the manner and for the purposes herein stated, have been by correspondence, and the letters and documents hereinabove referred to and made exhibits hereto are an embodiment of all of that correspondence with said banks and their officers and with the assignee of said Shirley C. Ashby, so far as the same is material as evidence on the hearing of this cause. And the said exhibits are and each of them is hereby made a part of this statement.

The defendant is a corporation having banking and trust powers and is, and for many years last past has been engaged in the business of banking and in receiving and executing trusts in the city of Chicago in the State of Illinois. That P. C. Peterson is now and for several years has been a clerk in the banking office of defendant in charge of the foreign exchange department, in whose honesty and business integrity the managers of the defendant have had and still have every confidence. That said Peterson is dependent for the support of himself and family upon the salary paid him by defendant, and is without pecuniary responsibility. That in the course of its banking business, the defendant has in numerous instances received certificates of stock in other corporations, which were understood to be in good financial condition, as collateral security for loans of money made by it, said certificates being so assigned as to enable the defendant to control the disposition of the same for its own protection, and when, for any cause, it may have become necessary or advisable to change the registration of the shares of stock represented by said certificates upon the books of the companies issuing the same, it has been the custom of the defendant to have the same registered and the new certificates issued in the name of some confidential man in its employment, to be held by him subject to the order and direction of the defendant. And the shares of stock in the said Helena national bank represented by the certificate assigned and delivered to the defendant as collateral security, as hereinbefore recited, by said Shirley C. Ashby, were directed to be placed in the name of said Peterson, and the new certificates therefor issued to him in pursuance of that custom of the defendant. The reasons for this custom were various. Amongst them may be mentioned the fact that the certificates are more readily dealt with when so held; that the defendant as a banking corporation is unwilling to appear as a stockholder on the books of other corporations, and may not properly assume that position; that the holding of stock as collateral security is not in fact an ownership of it, and that in some cases there is a liability attached to an apparent nominal holding of stock.

The defendant is still the holder of the note of the said Shirley C. Ashby for $12,000.00, dated April 15th, 1893, upon which two partial payments only have been made, both by the assignee of said Ashby, as shown upon the back of said note hereto attached, viz: one for $1,680.00 made December 12th, 1895, and one for $960.00 made October 6th, 1896.

16 That on the 4th day of September, 1896, and during the times hereinafter mentioned, the said First National Bank of Helena, Montana, was a national banking corporation, doing business at the city of Helena, Montana, and on the said last-mentioned day it suspended and closed its doors; and on September 10th, 1896, E. D. Edgerton was duly appointed as receiver of said bank by the Comptroller of the Currency, and qualified as such.

On January 15th, 1897, said Edgerton having resigned, and J. Sam. Brown having been duly appointed to succeed said Edgerton as receiver of said bank, duly qualified as such.

On November 9th, 1897, the commission of the said J. Sam. Brown as receiver of said bank was revoked, and E. T. Wilson, the plaintiff herein, was duly appointed, and has ever since that time been the duly qualified and acting receiver of said bank.

That on the 11th day of October, 1897, the Comptroller of the Currency, having levied an assessment upon the stockholders of the First National Bank of Helena, of one hundred dollars ($100) a share, payable at the office of the receiver, on or before November 11, 1897, the receiver of said bank issued and mailed to each and all of the persons who appeared on the books of said bank—to be stockholders therein, a notice of such assessment in manner and form as required by law, and demanded payment of same. That a copy of said notice was duly received by P. C. Peterson at the office of the defendant, The Merchants' Loan & Trust Company, of which fact the defendant, The Merchants' Loan & Trust Company, was duly advised.

That before instituting this suit the plaintiff duly demanded of said Merchants' Loan & Trust Company and P. C. Peterson, payment of the sum of twelve thousand dollars ($12,000) being the amount due under said assessment upon the said stock, so held in the name of P. C. Peterson, which payment was refused and no part of the assessment has been paid.

The foregoing is a correct statement of the facts concerning the transactions on which the suit is based.

D. A. HOLMES,
Att'y for Pl'ff.
JNO. N. JEWETT,
Att'y for Def't.

Dated this 18th day of April, 1899.

17 EXHIBIT 1—NOTE OF SHIRLEY C. ASHBY.

"EXHIBIT 1."

Copy.

Int. paid. Aug. 16.

$12,000.00. CHICAGO, *Ap'l* 15, 1893.

August 16th, after date, I promise to pay to the order of the Merchants' Loan and Trust Co., of Chicago, at its office, twelve thousand dollars, for value received, with interest at the rate of seven per cent. per annum after due, having deposited with them as collateral security 150 shares Helena National Bank stock, and I hereby give

the said Merchants' Loan & Trust Co., of Chicago, its assign or assigns, authority to sell the same, or any part thereof, on the maturity of this note, or at any time thereafter, or before, in the event of the said securities depreciating in value, at public or private sale, without advertising the same, or demanding payment, or giving notice, and apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said stock, and in case the proceeds of the sale of the said stock shall not cover the principal, interest and expenses, I promise to pay the deficiency forthwith after such sale.

SHIRLEY C. ASHBY.

EXHIBIT A—LETTER OF JUNE 25, 1894.

"EXHIBIT A."

Incorporated 1857.

J. W. Doane, pres't. F. C. Osborn, cashier.
Orson Smith, V. pres't. F. N. Wilder, ass't cash'r.

Capital and surplus, $3,800,000.

The Merchants' Loan & Trust Co.

CHICAGO, *June 25th*, 1894.

Frank Baird, Esq., cashier, Helena, Mont.

DEAR SIR: As you are aware, we hold 150 shares of your bank stock as collateral security to a loan, and which we want to sell. We wrote you once before asking you for an offer, and we believe never received a reply. Now we want to sell this stock or any part of it if we can get a fair price for it, and we wish to offer it to you or to your board of directors first, and will thank you to make us an offer for it or any part of it. We do not want to put this stock in the hands of a broker, but we must do so if we cannot make a sale to some of the parties in your bank. An early reply will oblige,

Yours truly, F. C. OSBORN, *Cashier.*

18 EXHIBIT B—CIRCULAR LETTER SEPT. 5, 1894.

"EXHIBIT B."

Confidential.

HELENA, MONTANA, *September 5*, 1894.

——, ——.

DEAR SIR: I have received many inquiries relating to the bank, its proposed reduction of capital stock, its present condition and future prospects.

Permit me to say that while many of my answers have been brief, because of uncertainty on some points and want of time, I shall endeavor in this communication to go into details.

It is only proper that I should call your attention to the fact that this letter is personal, confidential and strictly private, as I have to go into certain details which should not be known to the public generally; first because they relate to your own internal affairs, which should always be carefully guarded; and second, because I make use of a certain comparative statement regarding other institutions, in order to explain the position of your own. Therefore, relying on your discretion and fairness, I unreservedly submit this communication.

I assumed the office of president on the 3rd of August, 1893. Since that time there has been an entire change of officers; the former officers being Mr. Frank Baird, cashier, Mr. A. B. Clements, vice-president; these have been succeeded by Mr. George F. Cope, formerly of the American national bank, as cashier, and Mr. C. K. Cole, formerly of the Second national bank, as vice-president.

You will remember that my predecessor, Mr. Ashby, made a voluntary assignment for the benefit of creditors the day following the closing of the two largest banks in our city; these banks represented fifty-nine per cent. of the capital and surplus of the six national banks then doing business in Helena.

Mr. Clements' retirement occurred at the January election and reorganization of the board, and really signified nothing.

Mr. Baird's resignation went into effect on the 15th of August, this year.

At this time it is not my intention, for want of space, to comment on any of these matters; but I enclose a clipping on the subject of Mr. Baird's retirement which is fully explanatory.

It is never a pleasant task to criticise a predecessor, but it is only fair and just to myself and the present officers of the bank to call your attention to the fact that of the one hundred thousand
19 dollars ($100,000) charged off, over one-half was the indebtedness of your former president, Mr. Ashby.

On the 1st of August, 1893, being two days after your former president had resigned, and two days previous to my election, the reserve of this bank, counting all its available assets of cash and exchange, was less than ten per cent., or to put it more clearly, its total individual and bank balances were, in round numbers, two hundred thousand dollars ($200,000), its cash and exchange about seventeen thousand dollars ($17,000).

Today the individual and bank balances are six hundred and eighty-two thousand three hundred and thirty dollars and six cents ($682,330.06); to meet which we have two hundred and twenty-four thousand sixty-three dollars and forty-seven cents ($224,063.47) in cash and exchange; making an available reserve of thirty-three per cent.

I call your attention to these conditions of the bank, both present and past, not egotistically, but rather as a matter of justification, to show you, more forcibly than any words I can command, that if you are not entirely satisfied with your investment in its stock—first, that I am not responsible, and second, that matters might have been a great deal worse.

In fact I believe I am justified in saying that if a change had not been made at or about the time it occurred by force of circumstances, the bank would necessarily have suspended; and, it is further my opinion, knowing the conditions of the country, the assets of the bank, and all the surrounding circumstances, that if it had been closed out by forced collections in the hands of a receiver, you gentlemen, as stockholders, would have received a comparative small percentage for your stock.

We consolidated with the Second national bank, of which I had been president ten years, and we are also winding up the business of the Montana savings bank.

It must be remembered that while these consolidations have added to our strength and brought us in a line of new business which will materially strengthen and aid us in earning money in the future, up to the present time they have really cost money; in other words, matters of that kind cannot be successfully carried through without some additional expense, and no immediate profit can be realized. Any practical banker will readily comprehend this.

August 1, 1893, our individual depositors numbered two hundred and twenty-seven (227). Today they number five hundred and forty-seven (547). This shows quite a handsome increase.

I submit herewith a comparative statement of the Helena banks, which, better than anything else, illustrates their conditions, and in this way only can I give you an intelligent idea of the true relative history and situation of your own institution.

From this statement you will see that during the past year we have increased our business nearly half a million. It is fair to say that, at this date, our business is nearly one hundred thousand dollars better than at the time we made our last report, July 18th. I want you to carefully consider this tabulated statement of general bank balances, which speaks volumes and is more potent than any other written language. These figures are taken from the sworn reports to the comptroller.

From it you will see that the city has five national banks, standing in point of volume of business in the following order: "First," "Merchants'," "Montana," "Helena" and "American."

From the statement you will observe that during a period extending from July, 1892, to July, this year, the general banking business of Helena has shrunk from a million and a half to two million dollars, out of a total of about ten million; distributed, generally speaking, about as follows: The First national, about a million dollars; the Montana national, three-quarters of a million dollars; the Merchants' national, one-quarter of a million dollars, while the Helena national shows an increase of over three hundred thousand dollars, and the American national about two hundred thousand dollars.

It should be remembered that Mr. Cope, our present cashier, was an officer, during this period, of the American national.

I do not wish you to understand that I am trying to depreciate the position of other banks, because they are all doing a good busi-

ness and are considered successful institutions. But, this shows the vast shrinkage of business we have gone through, and the comparatively excellent relative position which your own bank has sustained.

A meeting of the stockholders of this bank was called in June and adjourned until the 10th of August, at which time there was represented something over four thousand shares of stock, all of which, with the exception of ten shares, voted for the reduction of the capital stock to four hundred thousand dollars. The sum of the reduction (one hundred thousand dollars) we shall at once charge off to profit and loss, some of which, while slow, will be eventually collected.

My own judgment was to charge off two hundred thousand, and put one hundred thousand or one hundred and fifty thousand into surplus and undivided profit account, which would have decreased our taxes and been the proper thing to do; but there was a sufficient number of our stockholders who preferred one hundred thou-
21 sand dollars' reduction to make me think it wise to defer to their judgment; and consequently, while we had the power and could have done as we wished, we refrained from doing so in deference to their wishes.

In conclusion, I hope that you will appreciate the fact that a year's hard work has been put in; that in the exchange of cashiers I have made the best selection in my judgment, and, I think, in the opinion of the community, that could possibly have been made; we have a man over fifty years of age, who has spent his entire life in connection with the business interests of Montana, and who has been with a successful banking institution for the past five years; he is in every way capable and competent to discharge the active duties of cashier.

This was a matter in which it was impossible to consult the individual stockholders, and your directors, who have done everything in their power to aid the interests of this institution, were left to their individual and collective judgment.

Trusting that this statement will prove that my silence has not been unwarranted, and that in all respects we have been diligently working for the best results; and trusting, that if opportunity affords you will aid in securing additional depositors and friends, we will close this statement by requesting that if you, individually, or any of your friends or acquaintances, should pass through Helena, that you will make it a point to call and know us personally; and we also especially request that if opportunities for doing business throughout this part of the country present themselves, that effort be made to direct it to this institution. We shall be pleased to receive personal letters, and become more thoroughly in touch individually with each and all of you.

Before closing I ought to add that it will not be advisable for us to declare a dividend this year. The amount that our capital has been reduced just about offsets the dividends that have been paid you.

It is my purpose to make this bank strong and solvent, with a

reasonable surplus. This may not concur with all your wishes, but, if this plan had been adopted at the inception of the bank, instead of the foolish one of really declaring more dividends than the bank actually earned, we would all have been saved much trouble, expense and mortification.

As to the future policy and reasons therefor, I will be able to give you a more satisfactory conclusion about the first of the year. I think that the extra expense incident to the consolidation, advertising and restarting of the institution will have practically been spent by the end of the year, and that we will be able to make a very much better showing on earnings after that.

22 It is only fair to us to call your attention to the fact that here in Montana a very large percentage of the money we handle as deposits we have to pay interest on in some form.

Asking your patient indulgence and support in this matter, I respectfully submit the foregoing.

E. D. EDGERTON, *President.*

Comparative Statement of Helena Banks.

Date.	First.	Merchants'.	Montana.	Helena.	American.
July 12, 1892	$4,401,215.20	$2,393,000.77	$2,288,252.57	$953,717.45	$658,741.20
May 4, 1893	4,511,422.16	2,300,697.75	2,051,015.74	989,034.26	691,474.42
July 12, 1893	.....	2,158,509.85	1,964,846 63	880,709.31	657,084.66
Feb. 4, 1894	3,826,217.44	2,024,271.45	1,577,874.35	1,174,616.80	879,435.26
May 4, 1894	3,761,771.02	2,002,421.52	1,546,971.59	1,230,639.21	853,696.88
July 18, 1894	3,506,877.47	2,084,433.84	1,491,212.35	1,268,545.47	839,926.41
Decrease	$1,004,544.69	$308,566.93	$797,040.22	.....	.....
Increase	.....	.....	.....	$314,828.02	$181,185.21

24 EXHIBIT C—LETTER OF OCT. 15, 1894.

"EXHIBIT C."

Incorporated 1857.

Orson Smith, pres't; J. G. Orchard, cashier; E. D. Hulbert, vice-pres't; F. N. Wilder, ass't cashier.

Capital and surplus, $3,500,000.

The Merchants' Loan & Trust Company.

(Copy.)

CHICAGO, *Oct. 15th*, 1894.

Geo. C. Cope, Esq., cashier, Helena, Mont.

DEAR SIR: Your favor of the 5th inst. received enclosing the statement of your bank. We are glad to see that you are making some progress.

We have, as you are aware, 150 shares of the Helena National Bank stock and we wish to sell the same in amounts of 10 shares and upwards. Will you kindly inform us if you could get a customer for same and at what price? We would thank you for your prompt reply, and if unsuccessful through yourselves, we wish to offer the stock for sale in your city or in St. Paul.

Yours truly, F. C. OSBORN, *Cashier.*

25 EXHIBIT D—REPORT OF CASHIER OF HELENA NATIONAL BANK.

"EXHIBIT D."

No. 4406.

Report of the Condition of the Helena National Bank, at Helena, in the State of Montana, at the Close of Business, October 2, 1894.

Resources.

Loans and discounts		$881,880.94
Overdrafts, secured and unsecured		6,433.52
U. S. bonds to secure circulation		70,000.00
Premiums on U. S. bonds		6,400.00
Stock, securities, etc		6,957.06
Banking-house, furniture, and fixtures		14,034.41
Other real estate and mortgages owned		58,709.34
Due from national banks (not reserve agents)	$12,128.33	
Due from State banks and bankers	53,836.26	
Due from approved reserve agents	89,844.43	
Checks and other cash items	2,515.41	
Exchanges for clearing-house	4,068.04	
Notes of other national banks	20,380.00	
Fractional paper currency, nickels, and cents	124.80	

Lawful money reserve in bank, viz:		
Specie	61,031.50	
Legal-tender notes	55,700.00	
		299,628.77
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		3,123.00
Total		$1,347,167.03

26 Liabilities.

Capital stock paid in		$500,000.00
Surplus fund		11,700.00
Undivided profits, less expenses and taxes paid		10,654.73
National bank notes outstanding		62,460.00
Due to other national banks	$34,511.52	
Due to State banks and bankers	75,393.14	
Dividends unpaid	785.00	
Individual deposits subject to check	318,790.11	
Demand certificates of deposit	101,000.00	
Time certificates of deposit	204,852.49	
Cashier's checks outstanding	10,020.04	
		745,352.30
Notes and bills rediscounted		3,000.00
Liabilities other than those above stated		14,000.00
Total		$1,347,167.03

STATE OF MONTANA, }
County of Lewis and Clarke, } ss:

I, George F. Cope, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

GEORGE F. COPE, *Cashier.*

Subscribed and sworn to before me this 4th day of October, 1894.

JOHN W. LUKE,
Notary Public.

[SEAL.]

Correct.
Attest:

E. D. EDGERTON.
J. B. SANFORD.
G. L. TRACEY.

27 EXHIBIT D—LETTER OF OCT. 18, 1894.

4406.

E. D. Edgerton, pres't; A. B. Clements, vice-pres't; Frank Baird, cashier; Jno. W. Luke, ass't cashier; Geo. F. Cope, cashier.

The Helena national bank.

Capital, $500,000.00.

HELENA, MONTANA, *Oct. 18th*, 1894.

F. C. Osborne, cashier Merchants' Loan & Trust Company, Chicago, Illinois.

DEAR SIR: Your letter to our Mr. Cope under date of Oct. 15th, received. From its contents, I think perhaps you did not receive our circular letter sent out some time since.

I think that your stock still stands in the name of Mr. Ashby; it was one of those matters which occurred before I came in here, and, until I saw your letter now the matter had entirely slipped my mind and I had forgotten that you were interested.

The West is slowly but very successfully recovering from the late uneasiness, but money is not plentiful by any manner of means. We have made a very handsome increase during the past year, and are laying the foundation, I think, for very successful operations. But, owing to the mismanagement of Mr. Ashby and former officers, we have had to charge off some paper, and in order to do this have reduced our capital stock one hundred thousand.

I do not believe that it would be possible to sell any stock at present. I think that more than likely in a year or so it can be disposed of at a fairly good figure. But just now it would be impossible to do anything with it, or any bank stock. All western banks, so far as has come under my observation, and I am interested in several institutions, are looked upon as far from desirable at the present time. This feeling of course must necessarily wear off, and the fact that representatives of some of the large concerns from the East are visiting Helena for the purpose of looking over the field as a place to loan money, tells me that confidence is slowly returning. Within the last half hour the representative of the Northwestern Life Insurance Company was talking with me; and within the last week the Mutual Benefit of New Jersey had a representative here. And, I might name others.

Hoping that the enclosed statement will be satisfactory I remain,

Yours truly, E. D. EDGERTON, *President.*

28 EXHIBIT E—LETTER OF DEC. 17, 1894.

"EXHIBIT E."

Incorporated 1857.

Orson Smith, pres't. J. G. Orchard, cashier.
E. D. Hulbert, vice-pres't. F. N. Wilder, ass't cashier.

Capital and surplus, $3,500,000.

The Merchants' Loan & Trust Company.

(Copy.)

CHICAGO, *Dec. 17th*, 1894.

Geo. F. Cope, Esq., cashier, Helena, Mont.

DEAR SIR: Your favor of the 13th inst. duly received. We will in future send all our collections to the First National Bank of Helena. Thanks for the printed circular regarding a consolidation of the Helena national bank with the First national. We would like to know how we stand in this matter. You know we hold 150 shares of the Helena National Bank stock as collateral to a note made by S. C. Ashby. What is necessary for us to do? How many shares of the First National Bank stock do we receive for the 150 shares of Helena national? Is there a market for the new stock? Please give us what information you can that we may proceed correctly, and oblige,

Yours truly, ORSON SMITH, *V. Pt.*

29 EXHIBIT F—LETTER OF DEC. 22, 1894.

"EXHIBIT F."

S. T. Hauser, pres't. Geo. F. Cope, cashier.
E. D. Edgerton, V. P. & manager. Geo. H. Hall, ass't cashier.

No. 1649.

First national bank.

Designated depository of the United States.

Capital and surplus, $1,000,000.

McM. HELENA, MONTANA, *Dec.* 22, 1894.

Orson Smith, vice-pres't Merchants' Loan & Trust Co., Chicago, Illinois.

DEAR SIR: Your favor of Dec. 17th to our Mr. Cope received. I never knew exactly how your matter with Mr. Ashby stood and I am pleased to have the information contained therein.

The new stock in the consolidated deal will be transferred on the same basis as held by the stockholders in the Helena national; but, it is only fair to call your attention to the fact that during the past three months the Comptroller of the Currency at our request, owing

to Mr. Ashby's peculiar methods and large indebtedness to the bank, has reduced the capital of the Helena national from $500,000 to $400,000. Consequently your 150 shares of the Helena national stock will be reissued to you in the same amount, less twenty per cent.

Inasmuch as we want to have matters as unanimous as possible, would it not be well for you to send in your stock and have it transferred to your own name, or, whatever name you may elect, and, send us your proxy to vote at the meeting in January regarding the consolidation?

We have considerably more than enough stock represented now to carry the matter, so you may know it is no selfish motive that prompts this suggestion, but rather for your own interest.

You understand Mr. Ashby is under an assignment, and, Lord know- what- not, and he has proven to be anything but a desirable party in *my* capacity of life that I know of.

30 You ask if there is a market for the new stock. I suppose you understand just how the West is at this time. We have no great amount of surplus money. I apprehend that there will be a market for the new stock, but just at the present time I don't know that I could refer you to any one. You understand that there are lots of western parties who would dispose of their western holdings at any price; and the truth is that the West is not quite able to take them all at once.

Any information that you may desire in the future I shall be most happy to supply if it is in my power.

Respectfully,

E. D. EDGERTON,
President of Helena Nat'l Bk.

EXHIBIT G—LETTER OF DEC. 26, 1894.

"EXHIBIT G."

Incorporated 1857.

Orson Smith, pres't. J. G. Orchard, cashier.
E. D. Hulbert, vice-pres't. F. N. Wilder, ass't cashier.

Capital and surplus, $3,500,000.

The Merchants' Loan & Trust Company.

(Copy.)

CHICAGO, *Dec. 26th*, 1894.

E. D. Edgerton, Esq., president Helena national bank, Helena, Mont.

DEAR SIR: I enclose herewith certificates of stock for 150 shares for which please send me two certificates of 50 shares each and one for 20 shares, in the name of P. C. Peterson. Mr. Peterson's address is care of this bank, and we will be very glad to furnish you with proxies if you will enclose us blanks for that purpose.

Where can Mr. Ashby be found? In a matter of this kind we would like very much to have him consent to our action.

Yours truly,

ORSON SMITH, *V. Pt.*

31 EXHIBIT H—LETTER OF DEC. 31, 1894.

"EXHIBIT H."

S. T. Hauser, president. Geo. F. Cope, cashier.
E. D. Edgerton, V. P. & manager. Geo. H. Hill, ass't cashier.

No. 1649.

First national bank.

Designated depository of the United States.

Capital and surplus, $1,000,000.

HELENA, MONTANA, *Dec.* 31, 1894.

Merchants' Loan & Trust Co., Chicago, Illinois.

GENTLEMEN: Yours of Dec. 26 received, with enclosure as stated. Agreeable to your instructions we have transferred the enclosed stock and return you herewith three certificates of the Helena National Bank stock, being numbered respectively 356–'7–'8, for fifty shares each, in the name of P. C. Peterson.

In your letter you instruct us to issue two fifty and one twenty certificates; undoubtedly this was under the assumption of the retirement of the one hundred thousand dollars I spoke of in my letter. While we have the order, we have never acted on it by making the formal change, inasmuch as about that time we arranged this consolidation and thought it useless to bother our people twice.

We have issued this stock just as it stands on our books. But under the consolidation, the new issue of the First national bank will be as you suggest, one hundred and twenty shares.

Mr. Ashby is still here in Helena, but I doubt if you could get his concurrence on anything as he has apparently literally gone all to pieces.

Respectfully, E. D. EDGERTON,
President the Helena National Bank.

1, 5, '95.

32 EXHIBIT I—LETTER OF MAY 17, 1895.

"EXHIBIT I."

Incorporated 1857.

J. W. Doane, pres't. F. C. Osborn, cashier.
Orson Smith, V. pres't. F. N. Wilder, ass't cashier.

Capital and surplus, $3,800,000.

The Merchants' Loan & Trust Co.

CHICAGO, *May 17th*, 1895.

E. D. Edgerton, Esq., manager, Helena, Mont.

DEAR SIR: Your favor of the 14th inst. received. We enclose herewith certificates for 150 shares of the stock of the Helena na-

tional bank, for which please send us certificates for 120 shares of your stock in the name of P. C. Peterson.

Yours truly, E. D. HULBERT, 2 *V. Pt.*

EXHIBIT J—LETTER OF OCT. 14, 1895.

"EXHIBIT J."

Incorporated 1857.

Orson Smith, pres't. J. G. Orchard, cashier.
E. D. Hulbert, vice-pres't. F. N. Wilder, ass't cashier.

Capital and surplus, $3,500,000.

The Merchants' Loan & Trust Company.

(Copy.)

CHICAGO, *October* 14, 1895.

R. S. Ford, Esq., assignee, Great Falls, Mont.

DEAR SIR: Your favor of the 10th inst. is received. If the suit of the Helena National Bank against Ashby is not to be decided for some time, would it not be better for all concerned that we should hold this stock and endeavor to find a purchaser at a fair price rather than to slaughter it now? Please let us hear from you and oblige,

Yours truly, E. D. HULBERT, 2 *V. Pt.*

33 EXHIBIT K—LETTER OF OCT. 17, 1895.

"EXHIBIT K."

R. S. Ford, pres't. E. G. Maclay, vice-pres't.
E. B. Werneck, cashier.

4541.

Great Falls national bank.

Capital stock, $250,000.00.

GREAT FALLS, MONTANA, *Oct. 17th*, 1895.

Merchants' Loan & Trust Co., Chicago, Illinois.

GENTLEMEN: Replying to your favor of the 14th inst. The suit of The Helena Nat. Bank *vs.* S. C. Ashby to establish their claim has been put off pending a criminal suit against Ashby, which is expected to come up for trial in the November term of the U. S. court. S. C. Ashby has never denied the claim of the Helena nat. bank, nor did any of the creditors attempt to deny said claim pending 30 days' notice given them by me as assignee to take legal action against my allowing said claim. Therefore I am unable to understand the necessity of the court's passing on said claim. I have on hand enough money to pay about 14 % on all claims against S. C. Ashby, which

has been held in abeyance since July 1st, last. On account of the unsettled state of this whole matter, I cannot use this money, or loan it safely to bring any interest, and I fear the creditors will be expecting interest of me. I have never desired you to make a forced sale of this stock, but felt during the 26 months past you might have found sale at a fair price, and trust you will try and secure a good fair price before parting with it. I have never desired you to make a forced sale, though it lies in your power so to do.

Yours truly,

R. S. FORD,
Assignee of S. C. Ashby.

34 EXHIBIT L—LETTER OF JAN. 4, 1896.

"EXHIBIT L."

R. S. Ford, pres. E. G. Maclay, vice-pres't.
E. B. Weirick, cashier.

4541.

Great Falls national bank.

Capital stock, $125,000.

GREAT FALLS, MONTANA, *Jan'y 4th*, 1896.

Merchants' Loan & Trust Co., Chicago, Illinois.

GENTLEMEN: I desire to sell and convert into cash in the early spring the remaining assets of S. C. Ashby, which consists of unimproved real estate in Helena, assessed at $23,000 and 48 shares of First Nat. Bank stock of Helena. Before the last dividend is declared I would like for you to make disposition for the collateral you hold on the $12,000 loan to Mr. Ashby, or entrust it to me to sell for your benefit. I am now trying to get an offer on the 48 shares I hold. Should I meet with an offer, will let you know the price offered. I take it you still hold this stock & so held same when I sent you a dividend of $1,680, being 14 % of the amount of your claim or date of assignment of S. C. Ashby, July 26th, 1893. Kindly let me know if you still hold this stock and whether 150 shares of the Helena nat. bank, or 120 of the First nat. bank, which number of shares would be issued you in case of transfer.

Yours truly,

R. S. FORD, *Assignee.*

Endorsed on back of said letter is the following:

Your favor of the 4th inst. rec'd. 150 shares of H. N. stock held as col. to Ashby loan has been xch. for 120 sh. 1st Nat. Bk. stock. The stock is not in our name, but controlled by us. Will be glad to see if we can get reasonable price.

MR. HULBERT.

35 EXHIBIT M—LETTER OF JAN. 7, 1896.

"EXHIBIT M."

Incorporated 1857.

Orson Smith, pres't. J. G. Orchard, cashier.
E. D. Hulbert, vice-pres't. F. N. Wilder, ass't cashier.

Capital and surplus, $3,500,000.

The Merchants' Loan & Trust Company.

(Copy.)

CHICAGO, *Jan. 7th*, 1896.

R. S. Ford, Esq., assignee, Great Falls, Mont.

DEAR SIR: Your favor of the 4th inst. received. The 150 shares of Helena National Bank stock which we held as collateral to the Ashby loan has been exchanged for 120 shares of First National Bank stock. This stock is not in our name but is controlled by us. We shall be glad to sell it if we can get what seems to us a reasonable price. Please advise us of any offer you may get for it.

Yours truly, E. D. HULBERT, 2 *V. P.*

Stipulation Waiving Jury, etc.

It is hereby stipulated and agreed between the parties herein that trial by jury in this case be waived; that this cause may be submitted to the Honorable Christian C. Kohlsaat, judge of this court upon the foregoing statement of facts duly signed by the attorneys of the parties respectively, and that for the purposes of such trial the said statement of facts shall be taken as absolutely true, and shall be taken and considered as all the facts concerning the transactions therein referred to, subject to any and all objections which might properly be urged to the competency or materiality of any part thereof.

Dated this 6th day of October, 1898.

D. A. HOLMES,
Attorney for Plaintiff.
JNO. N. JEWETT,
Attorney for Defendant.

The above and foregoing contains all the evidence presented to the court at the hearing and upon which the finding and
36 judgment of the court was based. And upon application of the attorney for the plaintiff the same is allowed as a bill of exceptions in the case and ordered to be filed as such.

Dated this 13th day of May, 1899.

KOHLSAAT, *J.*

Endorsed: Gen'l No. 9141. In the district court of the United States, northern district of Illinois. E. T. Wilson, receiver of the First Nat. Bank of Helena, *vs.* The Merchants' Loan & Trust Co. Bill of exceptions. Filed May 13th, 1899. T. C. MacMillan, clerk.

And afterwards, to wit: on the 13th day of May, A. D. 1899, petition for writ of error and assignment of errors were filed in the clerk's office of the district court of the United States for the northern district of Illinois, the same being in the words and figures following, to wit:

Petition for Writ of Error. Filed May 13, 1899.

In the District Court of the United States for the Northern District of Illinois, Northern Division.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY. } At Law.

Petition for writ of error.

And now comes E. T. Wilson, receiver, plaintiff herein, and says: That on or about the 18th day of April, 1899, this court entered judgment herein in favor of the defendant against this plaintiff, in which judgment and proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf to the United States circuit court of appeals for
37 the seventh circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said circuit court of appeals.

D. A. HOLMES,
Attorney for Plaintiff.

Assignment of Errors. Filed May 13, 1899.

In the District Court of the United States for the Northern District of Illinois, Northern Division.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY. } At Law.

Assignment of errors.

The plaintiff in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon the trial of the cause, to wit:

1. The court erred in finding the issues in favor of the defendant.

2. The court erred in overruling motion of plaintiff for a new trial.

3. The court erred in entering judgment in favor of the defendant and against the plaintiff.

D. A. HOLMES,
Attorney for Plaintiff.

Endorsed: No. 9141. In the district court of the United States for the northern district of Illinois, northern division. E. T. Wilson, receiver of the First National Bank of Helena, Montana, *vs.* The Merchants' Loan & Trust Company. Petition for writ of error. Assignment of errors. Filed May 13th, A. D. 1899. T. C. McMillan, clerk. D. A. Holmes, attorney for plaintiff, 843–'6 Marquette bldg.

38 And afterwards, to wit: on the 13th day of May, A. D. 1899, the following order was had and entered of record in said cause before the Honorable Christian C. Kohlsaat, judge, to wit:

Order of May 13, 1899, *Allowing Writ of Error.*

E. T. Wilson, Receiver of the First National Bank of Helena, Montana,
vs.
The Merchants' Loan & Trust Company. } 9141.

This 13th day of May, A. D. 1899, came the plaintiff by his attorney, and filed herein and presented to the court his petition, praying for the allowance of a writ of error intended to be urged by him, praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States circuit court of appeals for the seventh judicial circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error.

And afterwards, to wit: on the 13th day of June, A. D. 1899, the following order was had and entered of record in said cause before the Honorable Christian C. Kohlsaat, judge, to wit:

Order of June 13, 1899, *Extending Time in which to File Record.*

E. T. Wilson, Receiver, &c.,
vs.
Merchants' Loan & Trust Company. } 9141.

On motion, and for good cause shown, it is ordered by the court that the time within which to prepare the record herein for the circuit court of appeals be and the same is hereby extended ten days.

Writ of Error. Filed May 13, 1899.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between E. T. Wilson, receiver of the First National
— of Helena, Montana, plaintiff, and The Merchants' Loan
39 and Trust Company of Chicago, Ills., defendant, a manifest error hath happened, to the great damage of the said E. T. Wilson, receiver, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the seventh circuit, together with this writ, so that you have the same in the said United States circuit court of appeals for the seventh circuit at Chicago, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States circuit court of appeals for the seventh circuit may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern Dist. of Illinois.

Allowed by—
KOHLSAAT, *Judge.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ, I herewith transmit to the United States circuit court of appeals for the seventh circuit, a true and complete transcript of the record and proceedings in the foregoing-entitled cause this 21st day of June, A. D. 1899.

T. C. MACMILLAN,
Clerk United States District Court, Northern District of Illinois.

(Indorsed:) Filed May 13th, A. D. 1899. T. C. MacMillan, clerk.

40 *Clerk's Certificate.*

NORTHERN DISTRICT OF ILLINOIS, }
Northern Division. }

I, T. C. MacMillan, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the proceedings had in this court in the case wherein E. T. Wilson, receiver of the First National Bank of Helena, Montana, is plaintiff, and The Merchants' Loan and Trust Company, defendant, as the same appears from the records and files of said court now in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 21st day of June, A. D. 1899.

[SEAL.] T. C. MACMILLAN, *Clerk.*

Citation. Filed June 20, 1899.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Merchants' Loan & Trust Company, Chicago, Ill., Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the seventh circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the northern district of Illinois, wherein E. T. Wilson, receiver of the First National Bank of Helena, Montana, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsatt, judge of the district court of the United States, this 13th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

C. C. KOHLSAAT,
U. S. Dist. Judge.

Due service of the within citation is admitted this 19th day of June, 1899.

JNO. N. JEWETT,
Att'y for the Merchants' Loan and Trust Company.

(Indorsed:) Filed June 20, 1899. T. C. MacMillan, clerk.

41 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-room, in the city of Chicago, in said seventh circuit, on

the third day of October, 1898, of the October term, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third year.

42 And afterwards, to wit, on the twenty-second day of June, *1899, in the October term last aforesaid*, came the plaintiff in error, by his counsel, Mr. D. A. Holmes, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1898.

E. T. WILSON, Receiver of First National Bank, Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO. } No. 612.

The clerk will enter my appearance as counsel for the plaintiff in error.

D. A. HOLMES,
Per PIERCE.

Endorsed: Filed Jun- 22, 1899. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-second day of June, 1899, in the October term last aforesaid, came the defendant in error, by its counsel, Mr. John N. Jewett, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1898.

E. T. WILSON, Receiver of the First National Bank, Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO. } No. 612.

The clerk will enter my appearance as counsel for the defendant in error.

JOHN N. JEWETT,
Att'y for Def't in Error.

Endorsed: Filed June 22, 1899. Edward M. Holloway, clerk.

43 At a regular term of the United States circuit court of appeals, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the third day of October, 1899, of the October term, in the year of our Lord one thou-

sand eight hundred and ninety-nine, and of out Independence the one hundred and twenty-fourth year.

And afterwards, to wit, on the third day of October, 1899, in the October term last aforesaid, the following proceedings were had and entered of record, to wit:

TUESDAY, *October* 3, 1899.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

Order.

It is ordered by the court that Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Bunn appeared and took his seat as a member of said court.

44 And afterwards, on the same day, to wit, on the third day of October, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October* 3, 1899.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

E. T. WILSON, Receiver of the First National Bank of Helena,
vs.
MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO. } 612.

Error to the district court of the United States for the northern district of Illinois, northern division.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing November 2, 1899.

And afterwards, to wit, on the sixteenth day of October, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *October* 16, 1899.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge; Hon. Romanzo Bunn, district judge; Hon. William J. Allen, district judge.

45 *Order.*

It is ordered by the court that William J. Allen, judge of the district court of the United States for the southern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Allen appeared and took his seat as a member of said court.

And afterwards, to wit, on the second day of November, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *November* 2, 1899.

Court met pursuant to adjournment.
Present: Hon. William A. Woods, circuit judge; Hon. Romanzo Bunn, district judge; Hon. William J. Allen, district judge.

E. T. WILSON, Receiver, etc.,
vs.
MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO. } 612.

Error to the district court of the United States for the northern district of Illinois, northern division.

Now, this day, come the parties, by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. D. A. Holmes, counsel for plaintiff in error, and by Mr. John N. Jewett, counsel for defendant in error, and the court, having heard the same, takes this matter under advisement.

46 And afterwards, to wit, on the second day of January, 1900, of the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *January* 2, 1900.

Court met pursuant to adjournment.
Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

Order.

It is ordered by the court that Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Bunn appeared and took his seat as a member of said court.

And afterwards, on the same day, to wit, on the second day of January, 1900, of the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, said opinion being in the words and figures following, to wit:

47 In the United States Circuit Court of Appeals for the Seventh Circuit, October Session, 1899.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN AND TRUST Company of Chicago, Illinois.

No. 612. Error to the District Court of the United States for the Northern District of Illinois, Northern Division.

Before Woods, circuit judge, and Bunn and Allen, district judges.

This action was brought by E. T. Wilson, as receiver of the First National Bank of Helena, Montana, to recover of the Merchants' Loan and Trust Company, a banking corporation of Illinois, an assessment of $100 per share on one hundred and twenty shares of the stock of that bank, of which shares the bill alleges the trust company to have become the purchaser and owner at some time between December 1, 1894, and June 1, 1895. The pleas are, first, *nil debit;* second, denial of purchase and ownership of stock in the bank, and third, that the 120 shares of stock were and always had been held in the name of P. C. Peterson, as trustee, and as security for the payment of the promissory note of Shirley C. Ashby to the trust company. Trial by jury was waived by agreement in writing, and the court made a general finding of the issues for the defendant, and, having overruled a motion for a new trial, entered judgment upon the finding.

The evidence in the case, it appears by the bill of exceptions, consisted wholly of an agreed statement of facts, in substance as follows: On the 15th day of April, 1893, Shirley C. Ashby,
48 then president of the Helena National Bank of Helena, Montana, borrowed of the trust company $12,000, for which he gave his promissory note payable on the ensuing 16th day of August, and as collateral security delivered to the trust company a certificate assigned in blank representing 150 shares of the capital stock of the bank. The note recited the fact of the pledge and contained authority on the usual conditions for the sale of the shares and the application of the proceeds to the payment of the debt and expenses. On July 26 following Ashby made an assignment of his property, including the pledged shares, for the benefit of his creditors to Robert S. Ford of Grand Falls, Montana, and resigned the presidency of the bank, E. D. Edgerton succeeding him in that office. There followed correspondence between the trust company and Edgerton as president of the bank, by which the latter was told how the 150 shares were held by the trust company, and the trust company was informed of a proposed consolidation with the First National Bank of Helena, but that the stock of the Helena national bank had been reduced from $500,000 to $400,000, and consequently the 150 shares would be reissued in the same amount, less twenty per cent.; and on December 26, 1894, the vice-president of the trust company wrote to Edgerton, president, as follows:

"I enclose herewith certificates of stock for 150 sharss, for which

please send me two certificates of 50 shares each and one for 20 shares, in the name of P. C. Peterson. Mr. Peterson's address is 'care of this bank,' and we will be very glad to furnish you with proxies if you will enclose us blanks for that purpose. Where can Ashby be found? In a matter of this kind we would like very much to have him consent to our action."

The certificate was enclosed as stated and under date of December 31, 1894, Edgerton, as president, responded as follows:

"In your letter you instruct us to issue two fifty and one twenty certificates. Undoubtedly this was under the assumption of the retirement of one hundred thousand dollars I spoke of in my letter. While we have the order we have never acted on it by making the formal change, inasmuch as about that time we arranged this consolidation and thought it useless to bother our people twice. We have issued this stock just as it stands on our books. But under the consolidation the new issue of the First national bank will be as you suggest, one hundred and twenty shares. Mr. Ashby is still here in Helena, but I doubt if you could get his concurrence on anything, as he has apparently gone all to pieces."

Subsequently and before April 22, 1896, the proposed consolidation was consummated with the consent and approval of the
49 Comptroller of the Currency, the basis being an allowance to the stockholders of the Helena national bank of eighty per cent. of the face value of their stock in the stock of the consolidated bank, which was named the First National Bank of Helena, and on or about May 17, 1895, the certificates for 150 shares in the Helena national bank standing in the name of Peterson were surrendered by direction of the trust company, and in place thereof new certificates for 120 shares in the consolidated bank were issued to Peterson. "These last-named certificates," to quote the language of the agreement, "have ever since been and now are in the possession and control of the defendant, and are held by it in the same way and for the same purpose as the certificates for one hundred and fifty shares of the capital stock of the Helena national bank were originally held, except as the conditions may have been changed by the facts hereinbefore stated, but that neither the defendant nor the said Peterson ever took any part in the management of either of said banks or participated in the administration of their affairs." There followed a correspondence between the trust company and Ashby's assignee, commencing with the letter of October 14, 1895, in which the company inquired of Ford whether a sale of the stock was possible, to which three days later Ford replied, stating certain matters concerning Ashby and his litigation, and concluding as follows:

"I have never desired you to make a forced sale of the stock, but felt during the twenty-six months past you might have found sale at a fair price, and trust you will try and secure a fair price before parting with it. I have never desired you to make a forced sale, though it lies in your power to do so."

Under date of January 4, 1896, Ford wrote again, saying:

"I am now trying to get an offer on the forty-eight shares I hold. Should I meet with an offer, will let you know the price offered. I

take it you still hold this stock, and so held same when I sent you a dividend of $1,680, being 14% of the amount of your claim, *or* (at) date of assignment, July 26, 1893. Kindly let me know if you still hold this stock, and whether 150 shares of the Helena national bank, or 120 shares of the First national bank, which number of shares would be issued to you on transfer."

On January 7, 1896, the trust company responded:

"The 150 shares of Helena National Bank stock which we held as collateral to the Ashby loan has been exchanged for 120 shares of First National Bank stock. This stock is not in our name but is controlled by us. We shall be glad to sell it if we can get what seems to us a reasonable price. Please advise us of any offer you may get for it."

Peterson, at the time of the tran-fer of the stock to him,
50 was a clerk in the employ of the trust company and was without pecuniary responsibility. The shares in the Helena national bank were directed to be placed in the name of Peterson and the new certificates of consolidated stock were issued to him by direction of the trust company in pursuance of a custom and policy of that company to avoid liability as a registered shareholder of corporate stocks. The Ashby note is still held by the trust company, and, excepting two credits of $1,680 and $960, paid December 12, 1895, and October 6, 1896, by the assignee, remains unpaid. The facts of the suspension of the bank, the appointment of a receiver, the assessment of $100 per share on the stock, notice to stockholders, and demand of payment are all stated in detail.

Three errors are assigned, the finding of the issues for the defendant, the overruling of the motion for a new trial, and the entry of judgment in favor of the defendant.

Woods, circuit judge, after making the foregoing statement, delivered the opinion of the court:

It is urged by the defendant in error that the specifications of error call for an inquiry into issues of fact and present no question for review. The response for the plaintiff in error is that the agreed statement of facts is to be treated as a special finding on which the question arises whether the facts stated are sufficient to sustain the judgment rendered. It is well enough settled that an agreed statement of facts on which judgment has been rendered will be taken as the equivalent of a special finding. Supervisors *v.* Kinnecott, 103 U. S., 554; Lehman *v.* Dickson, 148 U. S., 71; St. Louis *v.* Western Union Tel. Co., 148 U. S., 92; "but manifestly," as we said in Burnham *v.* North Chicago St. R'y Co., 46 U. S. App., 670; 23 C. C. A., 677, "it is necessary that the ultimate facts be stated, and not evidence merely from which the facts to be established may be inferable." See, also, Mutual Reserve &c. Ass'n *v.* Curtis' Adm'r, 56 U. S. App., 586. The agreement before us to a large extent contains a statement of ultimate facts, sufficient, the plaintiff in error insists, to justify a judgment in his favor, but it consists in part of letters written by or to the defendant in error, which in so far as their contents are pertinent to the issues are not conclusive but only evidentiary.

The decisions of the Supreme Court touching the liability of shareholders for assessments upon the stock of national banks were reviewed and the principles deducible from them comprehensively stated in the recent opinion of that court in Pauly *v.* State Loan and Trust Company, 165 U. S., 606. While the rule is well
51 established "that the real owner of the shares of the stock of a national banking association may, in every case, be treated as a shareholder within the meaning of section 5151" of the Revised Statutes, it is also true, as there stated and as was decided in Anderson *v.* Philadelphia Warehouse Company, 111 U. S., 79, "that if one receives shares of the stock of a national banking association as collateral security to him for a debt due from the owner, with power of attorney authorizing him to transfer the same on the books of the association, and being unwilling to incur the responsibilities of a shareholder as prescribed by the statute causes the shares to be transferred on such books to another, under an agreement that they are to be held as security for the debt due from the real owner to his creditor—the latter acting in good faith and for the purpose only of securing the payment of that debt without incurring the responsibility of a shareholder—he, the creditor, will not, although the real owner may, be treated as a shareholder within the meaning of section 5151." The facts in Anderson *v.* Philadelphia Warehouse Company differ but little from the facts disclosed in this record, and this case must be governed by that unless the one distinction insisted upon by the plaintiff in error must be recognized, namely, that the turning of the shares in the Helena national bank into shares of the First National Bank of Helena was effected without the consent or authority of Ashby, the pledgor, and therefore was a wrongful conversion, which made the trust company the absolute owner of the stock and liable for the assessment upon it notwithstanding its being taken in the name of Peterson. This proposition is subject to more than one objection. In the first place, if the change was made without Ashby's consent or authority, it was nevertheless a matter of election on his part whether he would ratify it, and in the second place it is not shown by the statement of facts that the consolidation and the substitution of one stock for the other were not effected by his authority, or were not afterwards ratified by him, nor that they were not effected by the authority of or afterward ratified by his assignee, Ford. Neither is it shown that the assignee under the law and by order of the court, and by the consent of Ashby, did not have authority to consent to the substitution. The letters show that the trust company desired Ashby's consent, and that Edgerton did not think it likely that he would give it, but that does not prove that it was not in fact obtained. It is fairly inferable from the letters of the assignee, that before hearing from the trust company, and presumably from the beginning, he knew of the scheme for the consolidation, and it may well be supposed that he approved it. The fact of subsequent
52 consent and ratification by him is quite clear. It was alleged in the declaration, and the plaintiff in error therefore had the burden of proof, that the trust company "purchased and became the owner of 120 shares of the capital stock of the said First National

Bank of Helena." To establish that averment it was necessary to show that the original shares, confessedly held as collateral, were wrongfully converted into the new stock without the consent of the pledgor; but the fact is not so stated in the agreement; the letters and other circumstances all indicate the contrary; and the general finding of the court is conclusive of the question.

The judgment below is affirmed.

53 And afterwards, on the same day, to wit, on the second day of January, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *January* 2, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

Before Hon. William A. Woods, circuit judge; Hon. Romanzo Bunn, district judge; Hon. William J. Allen, district judge.

E. T. WILSON, Receiver of the First National Bank, Helena, Montana,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO, Illinois. } 612.

Error to the district court of the United States for the northern district of Illinois, northern division.

This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of Illinois and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed with costs.

54 And afterwards, to wit, on the thirty-first day of January, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, *January* 31, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

E. T. WILSON, Receiver, etc.,
vs.
THE MERCHANTS' LOAN AND TRUST COMPANY OF CHICAGO. } 612.

Error to the district court of the United States for the northern district of Illinois, northern division.

On reading and filing the order of plaintiff in error in said cause to stay the mandate of this court to the court below, and after hearing Delevan A. Holmes, Esq., solicitor for plaintiff in error, and John N. Jewett, Esq., solicitor for defendant in error, it is ordered that neither the mandate nor any process in the nature of a *procedendo* from this court to the court below be issued at the expiration of thirty days from the date of the judgment or decree entered in this case, as by rule of this court provided, but that said time of issuing a mandate, thirty days from the date of judgment, be, and the same is hereby, enlarged and extended to sixty days from date of judgment herein, and the mandate or other process in the nature of a *procedendo* to the court below is hereby stayed until the expiration of sixty days from the date of the judgment or decree rendered in this court.

55 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 54, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of E. T. Wilson, receiver of the First National Bank of Helena, *vs.* The Merchants' Loan and Trust Company of Chicago, No. 612, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this twelfth day of February, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

56 And afterwards, to wit, on the first day of March, 1900, in the October term last aforesaid, came the plaintiff in error, by his counsel, Mr. Delevan A. Holmes, and filed in the office of the clerk of this court his petition for writ of error to the Supreme Court of the United States and his assignment of errors, said petition for writ of error and assignment of errors being in the words and figures following, to wit:

57 In the Supreme Court of the United States.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY OF CHICAGO, ILLINOIS, Defendants in Error.

To the Honorable Henry B. Brown, associate justice of said court:

E. T. Wilson, receiver, the plaintiff in error in this case, hereby petitions your honor to allow a writ of error in this cause to the United States circuit court of appeals for the seventh circuit, and for cause thereof states—

That on the second day of January, A. D. 1900, the said circuit court of appeals entered a judgment therein in favor of the defendant in error against the plaintiff in error, in which judgment and proceedings certain errors were committed to the prejudice of the plaintiff in error, all of which will more in detail appear from the assignment of errors which is filed with this petition.

DELEVAN A. HOLMES,
Att'y for Pl'ff in Error.

WM. E. MASON, *Of Counsel.*

Allowed.
H. B. BROWN,
Asso. Justice.

58 In the Supreme Court of the United States.

E. T. WILSON, Receiver of the First National Bank of Helena, Montana, Plaintiff in Error,
vs.
THE MERCHANTS' LOAN & TRUST COMPANY OF CHICAGO, ILLINOIS, Defendants in Error.

Assignment of Errors.

The plaintiff in error in this cause, in connection with his petition for a writ of error, says that in the judgment of the United States circuit court of appeals in this cause there is manifest error, to wit:

1st. The court erred in holding that the exchange by the defendant in error of stock in the Helena national bank, held by it in pledge for stock in the First National Bank of Helena, if made without the consent or authority of Ashby, the pledgor, was nevertheless a matter which might subsequently be ratified by him or his assignee, and that such subsequent ratification would relieve the defendant in error of the responsibility of such exchange.

2nd. The court erred in holding that the burden of proof was upon the plaintiff in error to establish the fact that the original shares confessedly held as collateral were wrongfully converted into the new stock without the consent of the pledgor.

59 3rd. The court erred in finding that the agreed statement of facts does not show the wrongful conversion by the defend-

ant in error of the original shares into the new stock without the consent of the pledgor.

4th. The court erred in its conclusion that the letters and other circumstances all indicate that the original shares were not wrongfully converted into the new stock without the consent of the pledgor.

5th. The court erred in holding as a matter of law that the general finding of the district court is conclusive of the question as to the wrongful conversion of the original shares by the defendant in error.

6th. Said judgment is erroneous because it is in favor of the defendant in error and against the plaintiff in error, whereas upon the entire record it should have been in favor of the plaintiff in error.

For the errors alleged the plaintiff in error prays that the said judgment be reversed and remanded for further proceedings in accordance with law.

DELEVAN A. HOLMES,
Att'y for Pl'ff in Error.

WM. E. MASON, *Of Counsel.*

60 [Endorsed:] Filed Mar. 1–, 1900. Edward M. Holloway, clerk.

61 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 59, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of E. T. Wilson, receiver of the First National Bank of Helena, Montana, *vs.* The Merchants' Loan and Trust Company of Chicago, Illinois, No. 612, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this second day of March, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of *the United States circuit court of appeals for the* seventh circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals, before you or some of you, between E. T. Wilson, receiver of the First National Bank of Helena, Montana, plaintiff in error, and The Merchants' Loan and Trust Company of Chicago, Illinois, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of February, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

63 [Endorsed:] Supreme Court of the United States. E. T. Wilson, receiver of theFirst National Bank of Helena, Montana, plaintiff in error, *vs.* The Merchants' Loan and Trust Company of Chicago, Illinois, defendant in error. Writ of error. Filed Mar. 1, 1900. Edward M. Holloway, clerk. Copy deposited for the defendant in error in the clerk's office of the United States circuit court of appeals for the seventh circuit.

In obedience to the within writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the foregoing entitled cause this second day of March, A. D. 1900.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

64 UNITED STATES OF AMERICA, *ss:*

To the Merchants' Loan and Trust Company of Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the seventh circuit, wherein E. T. Wilson, receiver of the First National Bank of Helena, Montana, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this 27th day of February, in the year of our Lord one thousand nine hundred.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

65 [Endorsed:] Filed Mar. 1, 1900. Edward M. Holloway, clerk.

On this first day of March, in the year of our Lord one thousand nine hundred, personally appeared before me, the subscriber, Turner Pierce, and makes oath that he delivered a true copy of the within citation to John N. Jewett, attorney in this behalf of the within-named The Merchants' Loan & Trust Company.

TURNER PIERCE.

Sworn to and subscribed the 1st day of March, A. D. 1900.

[Seal Wallace E. Shirra, Notary Public, Cook Co., Ills.]

WALLACE E. SHIRRA,
Notary Public.

Due service of the within & foregoing citation is admitted this 1st day of March, 1900.

JNO. N. JEWETT,
Att'y for the Merchants' Loan & Trust Company.

Endorsed on cover: File No., 17,774. U. S. circuit court of appeals, 7th circuit. Term No., 290. E. T. Wilson, receiver of the First National Bank of Helena, Montana, plaintiff in error, *vs.* The Merchants' Loan and Trust Company of Chicago, Illinois. Filed May 24, 1900.